

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
February 5, 2003

ITEM: 13

SUBJECT: Administrative Assessment of Civil Liability against Lincoln Property Company for failure to pay annual storm water fees for the facility located at Puerta Real, Mission Viejo in Orange County. The Regional Board will consider comments received during the public review period and decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2003-0012) (Vicente Rodriguez)

PURPOSE: To consider the wavier of right to request a hearing from Legacy Partners (previously known as Lincoln Property Company), the comments received during the 30-day comment period, and an order adopting assessment of Administrative Civil Liability of \$882 as proposed in Complaint No. R9-2002-0349.

PUBLIC NOTICE: The 30-day comment period for this matter began November 25, 2002 and ended December 26, 2002. The 30-day comment period was noticed on the Regional Board's December agenda and the Regional Board's web page. The State Water Control Board's (State Board) Water Quality Enforcement Policy recommends that a public comment period should be provided prior to the settlement of any ACL.

DISCUSSION: The item before the Regional Board is to consider the adoption of an order assessing civil liability.

On November 1, 2002, *Complaint No. R9-2002-0349 for Administrative Civil Liability* was issued by the Regional Board Executive Officer to the discharger, Lincoln Property Company (now known as Legacy Partners). The discharger is alleged to have failed to pay the required annual construction storm water fees in the amount of \$250 in FY 2001-2002.

The discharger, upon receipt of Complaint No. R9-2002-0349, paid the proposed ACL amount of \$882 for failure to pay the annual construction storm water fee and waived the right to request a hearing before the Regional Board. As of January 21,

2003, the discharger has not paid the outstanding construction annual storm water fee of \$250.

BACKGROUND

On October 1, 1998, the Lincoln Property Company became part of the Legacy Partners. The Lincoln Property Company construction site is now referred to as the Legacy Partners construction site.

The Legacy Partners construction site is located at Puerta Real, Mission Viejo in Orange County, see the attached map (Supporting Document No. 1). The discharger holds waste discharge requirements prescribed by the Regional Board and, therefore, has to pay an annual fee pursuant to Section 13260 of the California Water Code. The annual fee was computed in accordance with Water Code Section 13260 and Title 23, California Code of Regulations, Section 2200.

The violation for non-payment is deemed to have occurred for Fiscal Year 2001-2002 from August 9, 2002 to October 15, 2002, or 432 days.

The outstanding annual fee of \$250 for the fiscal year 2001-2002 annual construction storm water permit has not been paid. This construction site is still in violation for failure to pay the outstanding fee. As of January 21, 2003, this site is an active construction site and continues to be regulated under the State Board's storm water construction permit.

Civil liability should be imposed on Legacy Partners by the Regional Board in the amount of \$882 for the violations cited above. The civil liability is based on a greater emphasis for the first 90 days after the fee was due (assessed at \$5 per day for the first 90 days, \$2 per day from 90 to 180 days, and \$1 per day after 180 days late). This is the same rationale used to determine other ACL complaints issued in the same time period for unpaid storm water annual fees. The calculated average liability per day is approximately \$2.05.

No comments were received during the public comment period.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map of Construction Site

2. Tentative Order No. R9-2003-0012
3. Waiver of Hearing Form signed by discharger, Nov. 13, 2002
4. Complaint No. R9-2002-0349 dated November 1, 2002

RECOMMENDATION: If the outstanding fee of \$250 remains unpaid, staff recommends removing this item from the consent calendar to allow for Regional Board hearing. Staff would recommend the Regional Board consider increasing the liability to include, at a minimum, the 113 days unpaid from October 16, 2002 to February 5, 2003.

If the outstanding fee is paid prior to the hearing, staff recommends adopting tentative Order No. R9-2003-0012.

ITEM 13-1



Legacy Partners Construction Site
(previously known as Lincoln Property Company)
Puerta Real, Mission Viejo
Orange County
WDID No. 9 30S309498

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE
ORDER NO. R9-2003-0012**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST**

**LEGACY PARTNERS
(PREVIOUSLY KNOWN AS LINCOLN PROPERTY COMPANY)**

**PUERTA REAL
MISSION VIEJO, ORANGE COUNTY
FOR FAILURE TO PAY ANNUAL FEES**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds the following:

1. Legacy Partners violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). Legacy Partners, hereinafter discharger, is regulated under WQ Order No. 92-08, Construction Storm Water Permit. The discharger's total unpaid annual storm water fees in this matter were in the amount of \$250 for the construction site located at Puerta Real, Mission Viejo in Orange County.
2. On November 1, 2002, the Executive Officer, in *Complaint No. R9-2002-0349 for Administrative Civil Liability* (ACL), proposed imposition of civil liability in the amount of \$882 for the violations alleged in Complaint No. R9-2002-0349.
3. The discharger, upon receipt of Complaint No. R9-2002-0349, paid the proposed ACL amount of \$882 for failure to pay the annual storm water fee and waived the right to request a hearing before the Regional Board. The discharger has also paid the outstanding annual storm water fee of \$250.
4. On February 5, 2003, the Regional Board held a hearing to solicit public participation in this matter, and considered the comments of interested persons regarding adoption of this Order.
5. Consideration of the factors prescribed in California Water Code Section 13327 based upon information available to the Regional Board prior to the hearing and described

February 5, 2003

in greater detail in Complaint No. R9-2003-0349 supports assessment of civil liability pursuant to Water Code section 13263 in the amount of \$882.

6. The adoption of this Order is an appropriate resolution of the violations alleged in Complaint No. R9-2002-0349 because of the following reasons:
 - a. The assessment of \$882 is a sufficient amount of liability to deter this discharger and other dischargers from not paying annual fees in the future.
 - b. The assessment of \$882 is consistent with the State Board enforcement assessment matrix for violations characterized as Minor compliance significance and Minor environmental significance.
7. The Regional Board incurred costs totaling \$330, which includes preparation of enforcement documents, and public hearings.
8. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Section 13261(b) of the California Water Code, that civil liability be imposed on the discharger, Legacy Partners in the amount \$882.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on February 5, 2003.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer



California Regional Water Quality Control Board

San Diego Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972



Gray Davis
Governor

WAIVER OF RIGHT TO A HEARING

ITEM 13-3

Keith Cook
Lincoln Property Co.
30 Executive Park, Ste 100
Irvine, CA 92614

Administrative Civil Liability
Complaint No. R9-2002-0349
\$882
November 1, 2002

WDID: 9 30S309498

By signing below, I agree to waive my right to a hearing before the San Diego Regional Water Quality Control Board with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Richard H. Simms
Signature

SVP
Title

11/13/02
Date

Send this signed form to:

John H. Robertus, Executive Officer
c/o Compliance Assurance Unit
California Regional Water Quality Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

| BU/Proj | Obj Acct | Date Subledger | Amount |
|---------------------------------------------------------|----------|----------------|--------|
| 27600 | 51309 | | 882.00 |
| | | | |
| | | | |
| Contract on File | | Total \$ | |
| Description: <u>storm drain permit</u> | | | |
| Instructions: <u>7101</u> | | | |
| Lincoln Property Public Hearing Waiver R9-2002-0349.doc | | | |

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

Recycled Paper



680281986

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)

Keith Cook)

Lincoln Property Co)

30 Executive Park, Ste 100)

Irvine, CA 92614)

Complaint No. R9-2002-0349

For

Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Lincoln Property Co owns and operates an active construction site located at Puerta Real, Mission Viejo in Orange County. This facility (WDID No. 9 30S309398) continues to be regulated under the State Water Resource Control Board's Order No. 99-08-DWQ *General Permit for Storm Water Discharges Associated with Construction Activity* (General Permit).
- 2) Lincoln Property Co is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**December 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**

- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the December meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of November 2002.
- 5) At the hearing, Lincoln Property Co will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

7) Lincoln Property Co is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board).

8) The following facts are the basis for the alleged violations in this matter:

Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Lincoln Property Co and an annual storm water fee has been assessed accordingly. Lincoln Property Co was sent the following invoices and late notices:

a) Invoice No. 1936 for the amount of \$250 sent July 10 and due August 9, 2001 for Fiscal Year 2001 - 2002 (FY 2001)

i) First late notice sent on September 11, 2001

ii) Second late notice sent on December 7, 2001

9) On April 24, 2002, the Regional Board notified Lincoln Property Co of the outstanding annual fee and that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

10) State Board records indicate that Lincoln Property Co has failed to make payment in response to the invoices and late notices.

11) The violation for non-payment is deemed to have occurred for a total of 432 days based on the following days:

Fiscal Year 2001-2002 from August 9, 2001 to October 15, 2002, or 432 days.

MAXIMUM ACL

12) Pursuant to Section 13261(b), the total maximum assessment for which Lincoln Property Co is civilly liable is \$432,000 (\$1,000 for each day of violation) for the violation cited above.

Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

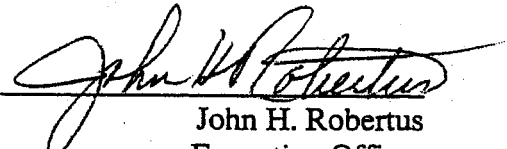
Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have

remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fee (\$250) and interest (approximately \$30, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$280 and \$432,000.

PROPOSED CIVIL LIABILITY

- 13) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Lincoln Property Co by the Regional Board in the amount of \$882 for the violations cited above.**
- 14) The proposed complaint (\$882) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 15) The Regional Board costs for investigating this incident were approximately \$250.

Dated this 1st day of November, 2002

By: 
John H. Robertus
Executive Officer